

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

TRACY THOMAS,)	
)	
Plaintiff,)	
)	
vs.)	Case No. 4:2009-cv-00417 (ERW)
)	
DUBUIS HEALTH SYSTEM, INC.,)	
et al.)	
)	
Defendants.)	

**PLAINTIFF’S MOTION AND MEMORANDUM FOR SANCTIONS BECAUSE OF
DEFENDANT DUBUIS’ BAD FAITH CONDUCT AT MEDIATION**

Comes now Plaintiff Tracy Thomas, by attorneys, pursuant to Fed.R.Civ.P. 16(f) and the Court’s inherent power to sanction a party for bad faith conduct, and for her Motion states:

1. In or about October, 2009, at the request of Greg Ballew, counsel for Defendant Dubuis, counsel for Plaintiff presented a demand from Plaintiff to Mr. Ballew.
2. On November 2, 2009, Mr. Ballew informed counsel in person that Plaintiff’s demand gave him hope that the matter could be settled.
3. Mr. Ballew urged the parties to schedule mediation in this matter prior to the referral to mediation date in the Scheduling Order in this case, so as to resolve the case that much sooner.
4. As a result of Mr. Ballew’s urging (presumably on behalf of his client, Defendant Dubuis), Plaintiff’s counsel arranged for a mediation to take place on December 14, 2009 with the Honorable William M. Corrigan through USA&M, Inc.
5. Plaintiff and her counsel attended the December 14, 2009 mediation as did a representative of each Defendant, with counsel.

6. At that mediation, Dr. Nancy Poblenz, the representative for Defendant Dubuis, announced that Defendant Dubuis “would not pay a dime.”
7. At that mediation, which began at 8:50 a.m., Defendant Dubuis refused to participate in any negotiation with Plaintiff until at or about 2:38 p.m. (in the interim, Plaintiff had no choice but to conduct negotiations only with the other Defendant), at which time Defendant Dubuis tendered a token offer with the ultimatum that Dr. Poblenz would be leaving at 3:00 p.m. to catch a flight back to Texas, so negotiations would have to conclude by 3:00 p.m. – a mere twenty-two (22) minutes later.
8. Of course, no settlement was reached with Defendant Dubuis, as that Defendant did not participate in any good faith negotiations.
9. Clearly, the conduct of Defendant Dubuis was in bad faith. *See, e.g., Guillory v. Domtar Indus., Inc.*, 95 F.3d 1320, 1334-35 (5th Cir. 1996) (sanctions imposed for settlement conference misconduct when party concealed its true position that it never intended to settle case).
10. A district court has “inherent power” to sanction an “offending party and his attorney when it determines a party has ‘acted in bad faith, vexatiously, wantonly, or for oppressive reasons.’” *Agee v. Paramount Communications Inc.*, 114 F.3d 395, 398 (2d Cir.1997). *See also* Fed.R.Civ.P. 16(f) (permitting sanctions for failure to obey a scheduling order).
11. The mediator, the Honorable William Corrigan (314-231-4642), has informed counsel for Plaintiff that they may notify the Court that he is available to discuss the mediation with the Court, subject to his duties of confidentiality as a mediator.

12. Plaintiff attaches hereto and incorporates herein the USA&M invoice for her share of the mediation expenses (Ex. 1) as well as declarations from her counsel regarding their time expended related to the mediation (Ex. 2 and 3).

WHEREFORE, Plaintiff requests the Court sanction Defendant Dubuis for its misconduct by ordering said Defendant to pay Plaintiff's share of the mediator's fee for the December 14, 2009 mediation; ordering Defendant Dubuis to pay for the hours spent by Plaintiff's counsel at that mediation; and by ordering Defendant Dubuis to attend another mediation, at its cost, at which it must participate in good faith. Plaintiff further requests the Court order such other relief as the Court deems just.

Respectfully submitted,

/s/ Eli Karsh

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CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing was sent by electronic case filing on the date reflected in the Court's electronic case filing records:

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/s/ Eli Karsh
